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Andrew Skibitsky, and Town Council of the
Town of Westfield

SUNNYSIDE SENIOR HOUSING OF)	SUPERIOR COURT OF NEW JERSEY
WESTFIELD, L.L.C.,)	LAW DIVISION - UNION COUNTY
)	DOCKET NUMBER UNN-L-135-09
Plaintiff,)	
)	Civil Action
vs.)	
)	<u>(Mount Laurel II)</u>
TOWN OF WESTFIELD, ANDREW SKIBITSKY))	
(Mayor of the Town of Westfield),)	
TOWN COUNCIL OF THE TOWN OF)	DECLARATORY JUDGMENT OF
WESTFIELD and PLANNING BOARD OF)	COMPLIANCE AND REPOSE
THE TOWN OF WESTFIELD,)	
)	
Defendants.)	

This matter having been jointly opened to the court by: Stickel, Koenig, Sullivan & Drill (Jonathan E. Drill, Esq., appearing) and Dentons US LLP (Robert W. Cockren, Esq., appearing), attorneys for defendants Town of Westfield, Mayor Andrew Skibitsky, and Town Council; Lindabury, McCormick, Estabrook & Cooper (Kenneth Soriero, Esq., appearing), attorneys for the Planning Board of the Town of Westfield; R. Marcel Pirtea, Esq., attorney for plaintiff; and Adam M. Gordon, Esq., staff attorney with Fair Share Housing Center, a public interest organization representing the housing rights of New Jersey's poor; and

the aforementioned parties having signed a Settlement Agreement dated December 11, 2012 (the "Settlement Agreement") settling Mount Laurel II litigation, which Settlement Agreement in paragraph 1 provides that the Settlement Agreement is contingent upon the Superior Court, Law Division (the "Court") (1) approving the Settlement Agreement after a "Fairness Hearing" conducted pursuant to East / West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), and (2) granting a Declaratory Judgment of Compliance and Repose pursuant to N.J.S.A. 52:27D-313(a) after a "Compliance Hearing" (the Fairness Hearing and Compliance Hearing together referred to as the "hearing"); and East / West Venture, supra, at 326, holding that Mount Laurel litigation may be settled only after a finding by the Court that: (1) the settlement has apparent merit, (2) notice has been given to all members of the class and others who have an interest in the settlement, (3) a hearing has been conducted on the settlement where those affected have sufficient time to prepare; and (4) the settlement is "fair and reasonable to members of the protected class"; and the Court, having determined for the reasons set forth on the record on January 23, 2013 that the Settlement Agreement had apparent merit, entered an Order of Remand and Scheduling of a Fairness and Compliance Hearing on January 23, 2013 (the "Remand Order"), with the hearing being scheduled for June 10, 2013, and the Remand Order required Defendant Town of Westfield (the "Town") to provide notice of the hearing to various specified parties at least 30 days prior to June 10, 2013 and that the notice be in the form approved by the Court and attached to the Remand

Order; and the required notice having been provided to all required parties within the time ordered by the Court; and the Court having duly conducted the hearing on June 10, 2013; and the Court having found upon the conclusion of the hearing for the reasons set forth on the record on September 9, 2013 that all criteria set forth in East / West Venture have been satisfied; and the Court having further found for the reasons set forth on the record on September 9, 2013 that the Town's Compliance Plan, consisting of its 2013 Housing Plan Element and Fair Share Plan (the "2013 HPE&FSP") along with various attachments as well as various implementing ordinances (all such documents together referred to as the "2013 Compliance Plan"), all of which 2013 Compliance Plan documents were entered into evidence during the hearing as exhibits, create the realistic opportunity to achieve the Town's affordable housing obligation under Mount Laurel II; and the Court determining to enter a separate Declaratory Judgment of Fairness and Reasonableness of the Settlement with a provision for the payment of the Special Master's fees; and the Court determining to enter a separate Declaratory Judgment of Compliance and Repose, as herein contained;

IT IS THEREFORE ON THIS 7th OF OCTOBER, 2013, ADJUDGED, DECLARED AND ORDERED AS FOLLOW:

1. Judgment is hereby entered in favor of defendants on the counterclaim for a Declaratory Judgment of Compliance and Repose (the "Judgment") pursuant to N.J.S.A. 52:27D-313(a) as set forth below and the complaint is conditionally dismissed as set forth below.

2. Subject to the conditions set forth below in paragraph 13

being satisfied, the Court hereby declares that there are land use regulations and affirmative devices in place in the Town which comply with the Town's constitutional obligation with respect to affordable housing under Mount Laurel II.

3. Subject to the conditions set forth below in paragraph 13 being satisfied, the Court hereby declares that the Town has met its prior rounds (First and Second Rounds) 51 unit Realistic Development Potential ("RDP") obligation and 88 unit unmet need obligation. The specifics are reflected on the following chart:

Satisfaction of Prior Round 51 Unit RDP & 88 Unit Unmet Need Obligation							
Project	Rental	Senior	Family	Prior Round Units	Prior Rental Bonus	Total Prior Round Credits	Unmet Need
Prior Cycle Credits							
ARC - 478 Whittier	x			4	0	4	0
Regional Contribution Agreement							
City of Elizabeth				21	0	21	0
Supportive & Special Needs Housing							
ARC - 56 Mohawk Trail	x			4	4	8	0
Our House - 506 Boulevard	x			2	2	4	0
100% Affordable Housing							
Westfield Senior Citizens	x	x		12	2	14	88
Total				43	8	51	88

The Court hereby declares that, notwithstanding any COAH restriction as to crediting of senior citizen units, consistent with the Order and

Final Judgment of Repose and Compliance entered on November 8, 1991 in the Mount Laurel II litigation captioned MacGeneral Contractor, Inc. et al. v. Town of Westfield, Docket No. L-79398-87-PW (the "1991 Judgment"), the Town is granted credit for all of the senior citizen units reflected in the above chart, and the 30 remaining units derived from the Westfield Senior Citizen project for which credits have not previously been allocated shall be applied to the Town's future affordable housing obligation.

4. The Court hereby declares that the vacant land adjustment granted in the 1991 Judgment remains valid and in full force and effect by reason of the fully developed nature of the Town and because there are no sites in the Town which have become available to permit inclusionary development beyond that included in the 2013 Compliance Plan.

5. The Town is hereby directed to reserve and use its affordable housing trust funds for satisfaction of its rehabilitation obligation in accordance with the spending plan contained in the 2013 HPE&FSP, which includes spending on the "hard costs" of physical repairs to average at least \$10,000 per rehabilitated unit and administration in accordance with N.J.A.C. 5:97-6.2. The Court hereby declares that the Town's rehabilitation obligation is 41 units, and the Court hereby approves the Town's spending plan subject to the conditions below in paragraph 13 being satisfied. The Court hereby declares that the Town committed to expend its affordable housing trust funds for satisfaction of its rehabilitation obligation in its April 6, 2009 Housing Element

and Fair Share Plan which was filed by COAH on April 13, 2009. Because COAH declined to exercise jurisdiction due to the pendency of the within litigation, this Court has jurisdiction to review and approve the Town's Compliance Plan, including the spending plan.

6. Subject to the conditions set forth below in paragraph 13 being satisfied, the Court hereby declares that the Town is granted at this time a credit of 55 units in satisfaction of its future Third Round affordable housing obligation as reflected on the following chart:

Crediting in Satisfaction of Future Third Round Affordable Housing Obligation				
Projects	Rental	Senior	Family	Third Round Units
Supportive & Special Needs Housing				
Our House - 506 Boulevard	x			4
Homefirst - 550 Trinity	x			2
HomeFirst - 706 Central	x			2
HomeFirst - 710 Central	x			2
100% Affordable Housing				
Westfield Senior Citizens	x	x		30
Inclusionary Housing				
Myrtle Avenue			x	5
Williams Tract			x	10
Total Credits at this time for Future Obligation				55
Sunnyside	x		x	4*
North Avenue and New Street TOD Zoning			x	14*
Grand Total of Credits for Future Obligation				73

7. As indicated in the chart in paragraph 6 by asterisks, the Sunnyside site, North Avenue TOD site, and New Street TOD site are not presently granted Third Round credits. However, the Town shall be granted credits in the future for each of the sites (4 credits for Sunnyside, 8 credits for North Avenue, and 6 credits for New Street) upon preliminary site plan approval being granted for inclusionary development on each of the sites.

8. The Court acknowledges that the proposed South Avenue TOD site contained in the 2013 HPE&FSP has been withdrawn by the Town as permitted by the terms of the Settlement Agreement. As such, no credits associated with the South Avenue TOD site have been granted. The Town and the Westfield Planning Board are hereby expressly authorized to modify the 2013 HPE&FSP as well as any and all other Master Plan Elements and/or ordinances to remove the South Avenue TOD site from the 2013 Compliance Plan.

9. With respect to the Sunnyside site, the Court hereby grants a waiver from the Uniform Housing Affordability Controls (UHAC), specifically, N.J.A.C. 5:80-26.3, to allow an alternative bedroom distribution mix in the Sunnyside development to permit 25% of the four affordable rental units to be designated with one bedroom as proposed and in accordance with the Settlement Agreement, which represents a waiver of 5% (20% maximum to 25% maximum) in the number of permitted one bedroom affordable units. The court declares that this waiver is de minimis and will, in combination with the two and/or three bedroom affordable units in the development, provide a full range of unit sizes

for rent to low and moderate income households.

10. The Court hereby declares that the market rate units constructed as part of the Sunnyside development shall not generate an affordable housing obligation.

11. To the extent that an Order Modifying the 1991 Judgment, which was entered on July 23, 1998 in the Mount Laurel II litigation captioned MacGeneral Contractor, Inc. et al. v. Town of Westfield, Docket No. L-79398-87-PW (the "1998 Order"), makes provision for the sale of Town owned Lot 1 in Block 4006 to a particular contiguous lot owner, the 1998 Order is hereby modified to authorize the Town to sell, lease and/or otherwise transfer Lot 1 in Block 4006 to any entity and/or person as proposed in the 2013 HPE&FSP.

12. The Town shall be required to submit annual reports to the Court and to the Court appointed Special Master, which reports shall generally follow applicable provisions of COAH's monitoring report format.

13. The Town shall satisfy the following conditions within 90 days of the entry of the within Declaratory Judgment of Compliance and Repose, unless an appeal from the within Judgment is filed in which case the time to satisfy the following conditions shall be stayed pending successful resolution of any such appeal:

13.1. Rehabilitation Program. Demonstrate to the satisfaction of the Court appointed Special Master that the County and Town rehabilitation programs meet COAH's substantive rules (N.J.A.C. 5:97, et seq.) as well as the UHAC rules (N.J.A.C. 5:80-26.1 et seq.)

through submission of the operating manuals for each program, sample affordability controls, and standard monitoring information for completed rehabilitation units in the Town.

13.2. ARC of Union County (478 Whittier Place). Submit documents to the satisfaction of the Court appointed Special Master establishing that the project complies with COAH rules, such as a completed alternative living survey and a letter from the sponsor indicating that the project continues to provide housing for special needs individuals.

13.3. ARC of Union County (56 Mohawk Trail). Submit documents to the satisfaction of the Court appointed Special Master establishing that the project complies with COAH rules, such as a completed alternative living survey and proof of adequate affordability controls.

13.4. Our House Inc. (506 Boulevard). Submit documents to the satisfaction of the Court appointed Special Master establishing that the project complies with COAH rules, such as a completed alternative living survey and proof of adequate affordability controls.

13.5. Homefirst Interfaith Housing (550 Trinity Place). Submit documents to the satisfaction of the Court appointed Special Master establishing that the project complies with COAH rules, such as a completed alternative living survey and proof of adequate affordability controls.

13.6. Homefirst Interfaith Housing (706 Central Avenue). Submit documents to the satisfaction of the Court appointed Special

Master establishing that the project complies with COAH rules, such as a completed alternative living survey and proof of adequate affordability controls.

13.7. Homefirst Interfaith Housing (710 Central Avenue).

Submit documents to the satisfaction of the Court appointed Special Master establishing that the project complies with COAH rules, such as a completed alternative living survey and proof of adequate affordability controls.

13.8. Affordable Housing Administration. Submit the following items:

- a. Adopted resolution appointing a municipal staff member to the position of Municipal Housing Liaison.
- b. Adopted resolutions appointing the Town's administrative agent(s).
- c. Operating manuals for sale and rental affordable units.
- d. Affirmative marketing plan.

13.9. Repeal of Growth Share Ordinance. Adopt an ordinance repealing and rescinding the Town's existing Growth Share Ordinance.

14. Defendants are hereby granted repose and immunity from exclusionary zoning lawsuits for its prior rounds' (First and Second Rounds) affordable housing obligation.

15. Defendants are hereby granted repose and immunity from exclusionary zoning lawsuits for its Third Round affordable housing

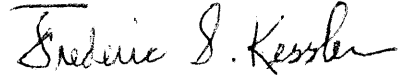
obligation as well as a stay of its Third Round affordable housing obligation until the date required for submission of a Third Round Housing Plan Element and Fair Share Plan as established by regulation, statute or court decision. The Town shall have the option of submitting its Third Round Housing Plan Element and Fair Share Plan to (1) the appropriate administrative agency for substantive certification or the equivalent if the Legislature or the appropriate administrative agency eliminates or modifies the substantive certification process, or (2) the court through a Declaratory Judgment action seeking a Judgment of Compliance and Repose.

16. The complaint is conditionally dismissed without costs, which dismissal shall become unconditional and with prejudice and without costs within 45 days after the later of: (1) entry of the within Judgment, or (2) the successful resolution of any appeal with regard to the adoption of the zoning ordinance implementing the Sunnyside site zoning.

17. The Court shall retain jurisdiction so as to ensure the implementation of the within Judgment and the 2013 Compliance Plan and the programs established under the 2013 Compliance Plan. Notwithstanding the retention of jurisdiction, the within Judgment is hereby declared to be a final judgment.

18. Defendants are preserved the right, should any subsequent change in state law or regulation occur, and/or for other good cause, to move before the Court for a reduction in obligation and/or modification of the 2013 Compliance Plan in accordance with such change

of law or regulation provided, however, that any such reduction in the fair share obligation and/or modification of the 2013 Compliance Plan would not alter any material provisions of the Settlement Agreement.

A handwritten signature in cursive script, reading "Frederic S. Kessler".

Frederic S. Kessler, P.J.Ch.